13293

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 96.

THE DIAMOND MATCH COMPANY, APPELLANT,

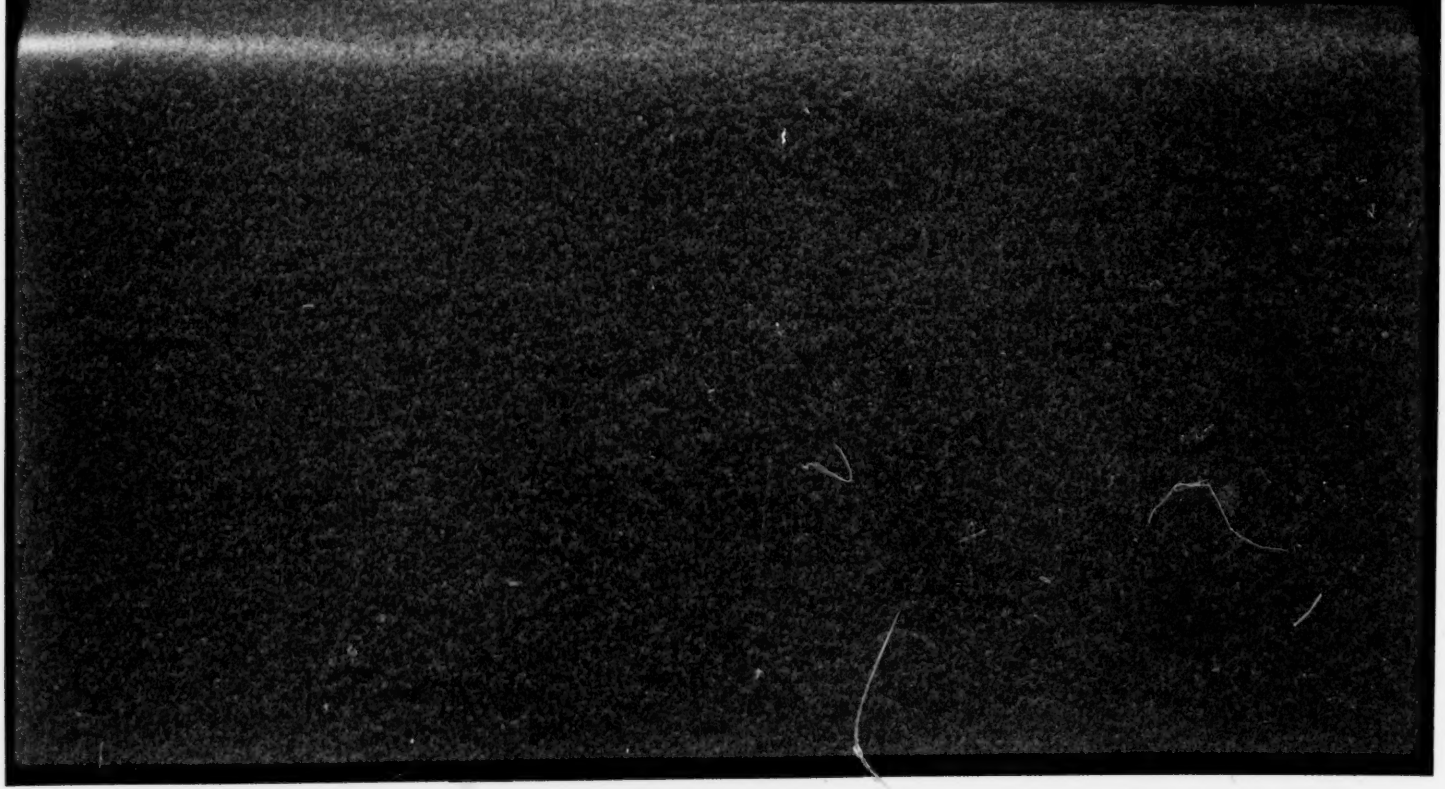
vs.

THE VILLAGE OF ONTONAGON AND GEORGE DUCLEAU, TREASURER OF SAID VILLAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED MAY 31, 1902.

(16,153.)



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OCTOBER TERM, 1901.

No. 320.

THE DIAMOND MATCH COMPANY, APPELLANT,

vs.

THE VILLAGE OF ONTONAGON AND GEORGE DUCLEAU, TREASURER OF SAID VILLAGE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

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* * * * * * * *

1 Be it remembered that on the day, to wit, the twenty-fifth day of August, A. D. 1899, came the complainant in said entitled cause, by its attorney, and filed in the clerk's office of said court a certain bill of complaint in words and figures as follows, to wit:

2 UNITED STATES OF AMERICA, ss:

United States Circuit Court, Western District of Michigan.

THE DIAMOND MATCH CO., a Corporation,
vs.
THE VILLAGE OF ONTONAGON, a Municipal Corporation; George Ducleau, Treasurer of the Village of Ontonagon; The Township of McMillan, a Quasi-public Corporation, and The Township of Ontonagon, a Quasi-public Corporation. } In Chancery.

To the honorable the judges of said court, in chancery sitting:

The complainant, The Diamond Match Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of said State, files this its bill against the Village of Ontonagon, a municipal corporation, in the county of Ontonagon and State of Michigan, and a citizen of said State, George Ducleau, treasurer of the village of Ontonagon, and a citizen of the State of Michigan, the Township of McMillan, a quasi-public corporation of the county of Ontonagon, State of Michigan, and the Township of Ontonagon, a quasi-public corporation of the county of Ontonagon and State of Michigan, and respectfully represents and shows to the court:

First. That the complainant is a corporation organized and existing under and by virtue of the laws of the State of Illinois,
3 with its principal office and place of business in the city of Chicago in said State; that it is engaged in the manufacture and sale of matches; that in the prosecution of its said business it uses a large amount of pine wood, lumber, timber, etc., and that it supplies itself with the same from its own and other timber lands situated in the State of Michigan, in the county of Ontonagon, and adjoining counties thereto; that it has been its custom to procure its said timber for its said purposes as follows: It cuts the same upon its said lands above mentioned in the winter season; the logs thereof are during said season placed upon and in the Ontonagon river and tributaries thereto which traverse aforesaid lands, and said logs there remain until the thawing and breaking up of the ice in said rivers in spring time, when they are driven down said streams to the booms, pier jams and sorting grounds of this complainant at or near the mouth of the Ontonagon river

Second. That in the summer and fall of the year 1895 extensive forest fires swept through the aforesaid Ontonagon and adjoining

counties and covering the timber tracts of the complainant company, and doing great damage to the timber thereon; that in order to preserve the timber so injured by said fire it was necessary to cut all said timber and put the same into the waters of the above-named streams; that during the winters of 1895 and 1896 complainant cut, hauled and put into the Ontonagon river and its tributaries a large number, to wit, one hundred and eighty million feet (180,000,000) of logs for the purpose of saving, protecting and preserving the same; that one hundred and eighty million feet of logs is a much greater number than the complainant ever utilized or could utilize in any one season in its business; that at the time the same were put into the waters aforesaid, it was not the intention of the complainant at the opening of said streams in the following spring to make a clean drive of the same, but to take down said streams the following spring and summer, and each succeeding driving
4 season thereafter, only a sufficient number thereof as the complainant could utilize at its mills; that at the time the logs were so cut and put into the streams aforesaid complainant was the owner of lumbering mills situated at or near the mouth of the Ontonagon river, and in or near to the corporate limits of the village of Ontonagon situated on said river; that it was at that time the intention of the complainant to saw the said logs aforesaid at its above-named lumbering mills; that said mills of complainant at Ontonagon were destroyed by fire in the fall of 1896; that the complainant never rebuilt the same, but that after the destruction thereof it destined the logs above described for its mills situated at Green Bay, Wisconsin; that while said mills at Green Bay *was* the destination of said logs, that, as above set forth, it was not the intention of said complainants to take to said mills during any one summer season any more than sufficient for its purposes, and not to exceed generally twenty million feet annually; that the route covered by said logs from their position in said streams to said mills at Green Bay is as follows: They are driven down the tributaries of said Ontonagon river into the stream of said river and thence down said Ontonagon river to a point at or near the mouth thereof in the township of Ontonagon to the sorting grounds and pier jams of the complainant; they are then loaded aboard cars and shipped by rail to Green Bay, Wisconsin, via the Chicago, Milwaukee & St. Paul railway, and pass out of the State of Michigan at a point near the village of Iron Mountain in said State.

Third. That when the driving season for the summer of 1898 had ended and the aforesaid Ontonagon river and tributaries thereto were closed by ice a large number of the aforesaid logs of complainant remained in and along said streams, to wit, thirty million feet of said logs; that said logs last above named were ice-bound in the said Ontonagon river and its tributaries the whole of the winter
5 season of 1898 and 1899 up to and until the first day of May, 1899, and were during said time, and on the first day of May, 1899, in said streams and within the confines of the defendant, The Township of McMillan, a quasi-public corporation, comprising a portion of the county of Ontonagon, which said township is trav-

ersed by the said Ontonagon river and tributaries thereto; that on the breaking up of the ice in the said Ontonagon river and its tributaries on or about the middle of May, 1899, complainant began driving a portion of said logs down said streams, and from then until about June 15th, continued so to do until it had taken down said stream and into its booms, pier jams or sorting grounds at or near the mouth of said Ontonagon river, and without the village of Ontonagon, in the township of Ontonagon, a large number of said logs, to wit, ten million feet, the greater portion of which still remain there; that none of said logs were ever within the corporate limits of the defendant, The Village of Ontonagon, until and after the 15th day of June, A. D. 1899, and that not to exceed four hundred thousand feet (400,000) at any one time since that date have been within the corporate limits of said defendant, The Village of Ontonagon, and then only for the purpose of loading the same on cars for shipment to Green Bay, Wisconsin.

Fourth. That there are special laws in force in the State of Michigan relative to the taxation of forest products, and in relation to the taxation of logs in transit; that paragraph 3837, section 14, vol. 1 of the Compiled Laws of Michigan, 1897, was, by an act of the legislature of said State passed and in force on and after Saturday the 8th day of April, A. D. 1899, and relating to the taxation of logs in transit, amended to read as follows:

"Personal property of non-residents of the State, and all forest products owned by residents or non-residents, or estates of deceased persons, shall be assessed in the township or ward where the same may be, to the person having control of the premises,
store, mill, dock, yard, piling ground, place of storage
6 or warehouse where such property is situated in such township, on the second Monday of April of the year when the assessment is made, except that where such property is in transit to some place within the State it shall be assessed in such place, except that where such property is in transit to some place without the State it shall be assessed at the place in this State nearest to the last boom or sorting gap of the stream in or bordering on this State in which said property will naturally be last floated during the transit thereof, and in case the transit of any such property is to be other than through any water-course in or bordering on this State, then such assessment shall be made at the point where such property will naturally leave the State in the ordinary course of its transit, and such property so in transit to any place without the State shall be assessed to the owner or person, persons or corporation in possession or control thereof, and in case such transit will pass said logs through the booms or sorting gaps, or into the places of storage of any person, persons, or corporation operating upon any such stream, then such property may be assessed to such person, persons, or corporation, and the person, persons, or corporation so assessed for any such property belonging to a non-resident of this State shall be entitled to recover from the owner of such property, by a suit in attachment, garnishment, or for money had and received any amount which the person, persons, or corporation so assessed is compelled

to pay because of such assessment, and shall have a lien upon said property as security against loss or damage because of being so assessed for the property of another and may retain possession of such property until such lien is satisfied: Provided, further, that any owner or person interested in said property may secure the release of the same from such lien by giving to the person, persons, or corporation so assessed a bond in an amount double the probable tax to be assessed thereon, but not less than the sum of two hundred dollars ($200) with two sufficient securities, conditioned for the payment of such tax by such owner or person interested, and the saving of the person, persons or corporation assessed from payment thereof, and from costs, damages and expense on account of his nonpayment which bond as to amount and sufficiency of surety shall be approved by the county clerk of the county in which the assessment is made."

Fifth. That the general law for the incorporation of villages in the State of Michigan under and by virtue of which the said village of Ontonagon is incorporated authorizes said village of Ontonagon to levy and collect taxes in accordance with the provisions herein set out:

Villages; finance and taxation.—Compiled laws of Michigan.

Vol. 1 (2852). SEC. 1. "The council shall have authority to raise, by general tax upon the real and personal property liable to taxation in said village (exclusive of taxes for highway and street
7 purposes and not otherwise provided for in this act), such sum not exceeding in any one year one and one-fourth of one per cent. of the assessed value of such property, as they shall deem necessary for the purpose of defraying the general expenses and liabilities of the corporation, and to carry into effect the powers in this act granted. The moneys so raised shall constitute a 'general fund.'"

(2853.) SEC. 2. "The council shall also have power to raise, by general tax upon all real estate and personal property aforesaid, such sum not exceeding one-half of one per cent. of the assessed value of said property, as they shall deem necessary for highway and street purposes. Such moneys shall constitute 'a general highway fund,' and shall be expended exclusively for working and improving the highways, streets, lanes and alleys of the village and for the construction and repairs of bridges therein."

(2857.) SEC. 6. "The council may also raise annually such further sum, not exceeding five mills on the dollar of the assessed value of the property in the village, as may be needed for an interest and sinking fund to pay the funded debt of the village, if any, and the interest thereon. The money so raised shall be used for the purpose aforesaid and for no other."

Sixth. That in and by virtue of the law relating to incorporated villages in the State of Michigan, it is provided, among other things, that the assessor of every village shall in each year, and at and within the same time as required by the general laws of the State

for the assessment of property in the townships of the State, make an assessment-roll containing a description of all the real property and the aggregate amount of all the personal property subject to taxation in the village; that in accordance with said provision, and in accordance with the laws heretofore set out and in force in the State of Michigan, and in accordance with other laws in the State of Michigan, it is the duty of the assessors of the various townships and villages of the said State of Michigan to prepare their assessment-rolls of the property within their respective territories and to return the same to the proper officials at and within the same period of time, and that if said assessors aforesaid properly perform their aforesaid duties, it would be impossible, in the absence of fraud or mistake, for the different assessors to place upon their assess-
8 ment-rolls for one and the same season the same property.

Seventh. That the defendant herein, The Township of McMillan, acting through and by its proper officials, claimed, under and by virtue of the laws heretofore set out and referred to, to have the right to assess and tax all of complainant's logs aforesaid, and did assess all of said complainant's logs for the purpose of levying a tax thereon for the year 1899; that the said logs were assessed by the proper assessing officer of said township of McMillan in accordance with the laws provided for that purpose and for the purpose of levying a tax thereon for the year 1899, and this complainant appears upon the assessment-roll of said officer as the owner of said logs, and as such owner liable to be taxed thereon in said township of McMillan for the year aforesaid; that the assessed valuation of the same by the said assessing officer of the town of McMillan is ten thousand dollars ($10,000), as appears by the assessment-roll of said township; that the amount of taxes levied, or to be levied, on said valuation and which the said township of McMillan claims the right to levy, and will levy, if not prohibited by court, by reason of its assessment on said logs, and by reason of the assessment of said logs as now appears upon its assessment-roll, will amount, so this complainant is informed and believes and upon such information and belief charges the fact to be, to a large sum, to wit, the sum of one thousand dollars ($1,000.00).

Eighth. That the defendant herein, The Township of Ontonagon, acting through and by its proper officials, claimed, under and by virtue of the laws heretofore set out and referred to, to have the right to assess and tax all of complainant's logs aforesaid, and did assess all of said complainant's logs for the purpose of levying a tax thereon for the year 1899; that the said logs were assessed by the proper assessing officer of said township of Ontonagon in accordance with the laws provided for that purpose and for the purpose
9 of levying a tax thereon for the year 1899, and this complainant appears upon the assessment-roll of said officer as the owner of said logs, and as such owner liable to be taxed thereon in said township of Ontonagon for the year aforesaid; that the assessed valuation of the same by the said assessing officer of the town of Ontonagon is one hundred thousand dollars ($100,000), as appears by the assessment-roll of said township; that the amount of taxes

levied, or to be levied, on said valuation and which the said township of Ontonagon claims the right to levy, and will levy, if not prohibited by court, by reason of its assessment on said logs, and by reason of the assessment of said logs as now appears upon its assessment-roll, will amount, so this complainant is informed and believes and upon such information and belief charges the fact to be, to a large sum, to wit, the sum of three thousand dollars ($3,000.00).

Ninth. That notwithstanding that none of complainant's logs aforesaid were, or ever came within the corporate limits of the village of Ontonagon until after the first day of June, 1899, nor until after the proper time for the completion of the assessment of the property within said village by the assessor thereof for the purpose of levying taxes thereon, as provided by law, was passed, yet the defendant, The Village of Ontonagon claimed, under and by virtue of the laws heretofore set out and other laws of the State of Michigan in force and referred to, the right to assess all complainant's said logs for the purpose of levying a tax thereon for municipal purposes for the year 1899, and that said defendant The Village of Ontonagon, through and by its assessor, did assess all said complainant's logs for the purpose of levying a tax thereon, and that said complainant appears upon the assessment-roll of said village as the owner of the aforesaid logs and subject to be taxed therefor, for the purposes of said village of Ontonagon; that the assessed valuation placed upon said logs by the
10 assessor of said village of Ontonagon, as shown by the assessment-roll thereof for said village, is one hundred thousand dollars; that said valuation so placed upon complainant's aforesaid logs by said assessor was allowed to remain unchanged by the board of review of said village, whose duty, as is provided by law, is to pass upon and review the acts of the assessor of said village; that said assessor of said village of Ontonagon, in accordance with the provisions of the law, properly returned his assessment-roll for the purposes of review to the board of review of said village, which, after passing upon the same, properly certified the same to the council of said village, which afterwards returned the same to the assessor of said village, together with the amount of taxes to be raised, which amount of said taxes to be raised was then by the assessor divided *pro rata* and set opposite to the property appearing in said assessment-roll; that said village of Ontonagon has levied thereby upon said complainant's logs, for municipal purposes, the sum of sixty-seven hundred and fifty dollars ($6,750.00) upon the assessed valuation of one hundred thousand dollars ($100,000) fixed by said assessor in said assessment-roll, which said sum of $6,750.00 is divided into three separate parts,—one for $1,250.00 being 1¼ per cent. tax on the assessed valuation of said logs for general purposes; second, for $500.00 being five mills on each dollar of the assessed valuation for highway purposes, and the third $5,000.00 being five per cent. on the assessed valuation for a sinking fund or bond purposes; that the assessment-roll of said village of Ontonagon, with the amount claimed as taxes to said village, by virtue of its levy thereon on the property therein designated set opposite the property, as provided by law, with a warrant to the treasurer of said

village to collect from the owners of the property therein described the amount so claimed to be due from the property of such owner, which said warrant is executed by the proper officers of said
11 village, all as is provided by law, is now in the hands of the defendant George Ducleau, treasurer of said village of Ontonagon; that said defendant George Ducleau, treasurer, has demanded of this complainant the aforesaid sum of $6,750.00 in payment of the taxes so levied against complainant on account of complainant's ownership of the aforesaid logs.

Tenth. That the assessment and taxation of complainant's logs aforesaid by the village of Ontonagon, heretofore set out, is illegal, fraudulent and void; that the village of Ontonagon through and by its assessor had no right to place complainant's logs aforesaid upon its assessment-roll for the purpose of levying taxes thereon for the year 1899, or for any other purpose; that the placing of said logs on said assessment-roll and the assessment thereof by said village of Ontonagon was done without the knowledge of this complainant; nor did the complainant learn thereof until after the time for it to secure relief, as provided by law, before the board of review for said village had passed; that said village of Ontonagon through and by its proper officials has no right to collect the tax levied upon said logs as heretofore described from this complainant; that said village of Ontonagon has no right to tax logs in transit for any purpose whatsoever; that said logs nor any portion of the same were within the corporate limits of the said village of Ontonagon at the time that they were placed upon the assessment-roll of the assessor thereof for the purpose of taxation for the year 1899, nor had they ever been prior to that time within the corporate limits of said village; nor have they ever been so as to render them liable to taxation by said village of Ontonagon; nor are they now in said village, except a portion thereof preparatory to being shipped therefrom; that the amount of taxes so levied against the complainant on account of its ownership of said logs by said village of Ontonagon is excessive and exorbitant, and greater than the amount allowed to be taxed
12 in any one year by said village upon any property of the value of said logs and rightfully within its limits.

Eleventh. That the defendants, The Village of Ontonagon and George Ducleau, treasurer of said village of Ontonagon, will, unless restrained by this court, and unless the complainant herein complies with their demand for the payment of the taxes aforesaid described, levied by said village upon complainant's aforesaid logs, levy upon said logs, or a portion thereof, or other property of this complainant found within the State of Michigan, for the purpose of selling the same to satisfy the claim of said village to the amount of the taxes so levied by said village against said logs; that said defendants last above named have threatened this complainant that unless the complainant pays said taxes so levied by said defendant The Village of Ontonagon that the defendant George Ducleau, treasurer of said village, will seize said logs, or a sufficient amount thereof, or other property of said complainant within the State of Michigan, for the purpose of selling the same and applying the proceeds

thereof to the satisfaction of the amount claimed due said village for the taxes aforesaid.

Twelfth. That by reason of the premises heretofore set out and that by reason of the law for the taxation of logs and forest products in the State of Michigan, which this complainant shows is indefinite and vague, this complainant is unable to determine in which of the townships herein made defendants, namely, The Township of McMillan and The Township of Ontonagon, complainant's said logs are herein properly taxable; that it does not seek to avoid or escape the payment of a just and reasonable tax upon its aforesaid logs; that it stands willing and ready to pay to whichever one of said townships, as this court determines, has a right to tax and assess said logs for the year 1899 whatever sum is just and reasonable and its proportionate share of said taxes of said township by reason of its ownership of said logs; that it has not colluded
13 with any of the defendants herein; that it is not now in collusion with any of the defendants herein; that it files this bill of its own accord and for the sole purpose of having its rights determined herein, and for its protection against triple taxation and to avoid a multiplicity of suits and vexatious litigation.

Thirteenth. That while this complainant stands ready and willing to pay its just and reasonable taxes to the State of Michigan in either the township of McMillan or the township of Ontonagon, as this court may determine, yet this complainant shows to the court that the valuation of its said logs by the assessing officer of the township of Ontonagon is excessive, exorbitant, and out of proportion to the valuation placed upon the other personal property by said assessor in said township; that the assessment of said logs by said assessor of said township of Ontonagon was unknown to this complainant prior to the time for it to secure relief before the proper board of review; that it was unknown to said complainant until just prior to the filing of this the complainant's bill herein; that the complainant is informed and believes, and upon such information and belief charges the fact to be, that the valuation placed upon complainant's logs by the assessor of said township of Ontonagon was made excessive and exorbitant and much higher relatively than other personal property was assessed by said assessing officer for the purpose of making this complainant bear an unfair portion of the burdens of taxation in said township, and to relieve the residents of said township from bearing their just proportion of the taxes of said township, and that should this court determine that complainant's logs aforesaid were for the year 1899 properly assessable and taxable in the township of Ontonagon aforesaid, that then this court should determine what is a just and fair assessed valuation upon said logs in said township for the purpose of taxation for the year aforesaid.

14 Fifteenth. That the amount in dispute herein exceeds the sum of two thousand dollars ($2,000.00), exclusive of interest & costs.

Forasmuch therefore as the complainant is without an adequate remedy in the premises except in a court of equity; to the end that

the said Village of Ontonagon, a municipal corporation, George Ducleau, treasurer of the village of Ontonagon The Township of McMillan, a quasi-public corporation, and The Township of Ontonagon, a quasi-public corporation, all of whom are made parties defendant herein, may be required to make full and direct answer to this bill, and its several allegations, but not under oath, the answer under oath being hereby waived; that the rights of the complainant and the defendants be ascertained; that the defendants The Township of McMillan and The Township of Ontonagon may be required to interplead herein; that it may be determined which one thereof had the right to assess the complainant's logs herein described for the purpose of levying taxes thereon for the year 1899, and which of the said defendants has the right to collect taxes because of its assessment of said logs for the purposes of taxation for the year aforesaid; that the assessed valuation of said logs in whichever township it is determined has the right to assess the same be fixed at an equitable and just amount, and in accordance with the valuation placed upon other property of like nature in said township; that the one of the two defendants last above named so found not to have had the right to so assess said logs be forever restrained from levying or collecting any tax by reason of its assessment thereof, and be perpetually restrained and enjoined from levying upon any of the property of this complainant situated in the State of Michigan to satisfy any tax so levied and assessed against this complainant by reason of its ownership of said logs, and from taking any steps whatsoever for the collection of any taxes from this complainant because of its wrongful taxation of complainant's logs; that the defendants
15 The Village of Ontonagon, and George Ducleau treasurer thereof, be forever enjoined and restrained from levying upon complainant's logs, or upon any other property of this complainant whatsoever situated in the village of Ontonagon or elsewhere in the State of Michigan, or from seizing said logs or any of complainant's property whatsoever, or from taking any steps or means whatsoever to collect from this complainant the sum of sixty-seven hundred and fifty dollars ($6,750.00), or any other sum, claimed by said village of Ontonagon to be due to it by reason of its assessment and taxation of complainant's logs for municipal purposes for the year 1899, and that the assessment of complainant's aforesaid logs by the village of Ontonagon and the levy of the aforesaid taxes against complainant's said logs by reason of said assessment be decreed to be illegal and void, and of no effect whatsoever; and that the complainant may have such other and further relief in the premises as equity may require and to your honors may seem just and meet.

May it please the court to grant unto the complainant the writ of summons in chancery directed to the marshal of the said district commanding him that he summons the said defendants The Village of Ontonagon, a municipal corporation, George Ducleau, treasurer of the village of Ontonagon, The Township of McMillan, a quasi-public corporation, and The Township of Ontonagon, a quasi-public corporation, to be and appear in this court at the next term thereof, to be holden in the room occupied by this court as a court-room in

the city of Marquette, Michigan, to answer the premises and abide by and perform such decree as may be entered herein:

May it please the court to grant unto the complainant the writ of injunction enjoining and restraining the Village of Ontonagon, George Ducleau, treasurer of the village of Ontonagon, their counselors, attorneys, *attorneys*, trustees, agents, clerks, employés,
16 servants and workmen, and each and every of them, from levying upon complainant's logs, or upon any other property of this complainant whatsoever situated in the village of Ontonagon or elsewhere in the State of Michigan, or from seizing said logs or any of complainant's property whatsoever, or from taking any steps or means whatsoever to collect from this complainant the sum of sixty-seven hundred and fifty dollars ($6,750.00), or any other sum, claimed by said village of Ontonagon to be due to it by reason of its assessment and taxation of complainant's logs for municipal purposes for the year 1899.

And the complainant will ever pray, etc.

THE DIAMOND MATCH COMPANY,
By WALKER & PAYNE, *Its Solicitors.*

WALKER & PAYNE,
Solicitors for Complainants.
EDWIN WALKER,
JOHN BARTON PAYNE,
Of Counsel.

17–41 STATE OF ILLINOIS, } ss:
Cook County, }

Ralph E. Wirt, being first duly sworn, on oath deposes and says that he is the assistant secretary of the Diamond Match Company, a corporation, and duly authorized to make this affidavit on its behalf to its foregoing bill; that he has heard read the said bill of complaint and that he knows the contents thereof and that the same is true, except as to the matters and things therein stated to be upon information and belief, and as to those matters he believes them to be true.

RALPH E. WIRT.

Subscribed and sworn to before me this 23rd day of August, A. D. 1899.

E. C. KERNOLFF,
[SEAL.] *Notary Public.*

(Endorsed:) No. 148. United States circuit court, western district of Michigan, northern division. The Diamond Match Company, *vs.* The Village of Ontonagon, *et al.* Bill for injunction. Filed Aug. 25 1899. Chas. L. Fitch, clerk. Walker & Payne, sol'rs for compl't.

* * * * * * *

42 And afterwards, to wit, on November 4th, A. D. 1899, came the defendants, The Village of Ontonagon, and George Du-

cleau, treasurer thereof, and filed in the office of the clerk of said court in the said entitled cause, their joint and several answer, which said answer is in words and figures as follows, to wit:

43 The Circuit Court of the United States for the Western District of Michigan, Northern Division.

The answer of the Village of Ontonagon and of George Ducleaux, its treasurer, to the bill of complaint filed against them by The Diamond Match Company, with other defendants, as follows: The Township of McMillan and The Township of Ontonagon.

Answering said bill of complaint, these defendants, The Village of Ontonagon and said George Ducleaux, its treasurer, say:

First. These defendants have no knowledge sufficient to form a belief whether the complainant is a corporation organized and existing under the laws of Illinois, or whether it has its principal office and place of business in the city of Chicago. They admit the other allegations of paragraph marked "First" in the bill of complaint.

Second. These defendants admit that the forest fires damaged timber owned by the complainant, but deny that the quantity so damaged equaled one hundred eighty million feet, and allege that the quantity so damaged did not exceed fifty million feet; they admit that the complainant put one hundred and eighty million feet of logs into the Ontonagon river and its tributaries, as in said bill alleged, but deny that it put into said river and its tributaries said quantity of timber for the reason in said bill stated; they admit that one hundred eighty million feet is a greater quantity than complainant ever utilized in any one season, and that at the time said one hundred and eighty million feet of logs were put into the stream, it was not the intention of the complainant to make a clean drive of the same the following spring, but what number in succeeding driving seasons the complainant intended to drive, defendants say they have no knowledge sufficient to form a belief. They admit that at the time aforesaid, complainant owned lumber mills in the village of Ontonagon, and they allege that said
44 mills were all within the village of Ontonagon, and they admit that it was the intention of the complainant to saw all of said logs in said mills, and admit that the same were destroyed by fire, as alleged, in 1896, and that complainant never replaced the same. They admit that after the destruction of said mills said logs were destined to be cut in mills at Green Bay, Wisconsin, but they have no knowledge sufficient to form a belief as to what was the intention of complainant in respect to the quantity of logs to be taken in any one summer to said mills.

But these defendants aver on information and belief, that said complainant carried to its said Green Bay mills in the season of 1897 more than forty million feet of logs, and in the season of 1898 about thirty-eight million feet, and so far the present season, about fifteen million feet.

They admit that said logs were driven down the said tributaries of said Ontonagon river, and down said river, and to the sorting

grounds and pier jams of complainant, as alleged, but these defendants aver in this connection, that after being driven to said sorting grounds and pier jams, said logs were driven still further down said river into the corporate limits of the village of Ontonagon, within which corporate limits they were taken from the water, at the last boom and sorting gap of said river, and placed on board cars, to be shipped to Green Bay, Wisconsin, via Chicago, Milwaukee & St. Paul railway, and passed out of Michigan at a point near Iron Mountain.

Third. These defendants allege that within the village limits of the village of Ontonagon is situate the last boom or sorting gap of the said Ontonagon river, from which last boom or sorting gap the logs of the complainant have been, and are, all taken and placed upon cars for shipment as aforesaid, and that the village of Ontonagon is the place in this State nearest to said last boom and
45 sorting gap, and that at said last boom and sorting gap said logs, whenever they have been shipped in the past, and when the present season in course of shipment, is the last place in said Ontonagon river where said logs are floated before shipment by rail as aforesaid.

Fourth. That these defendants have no knowledge sufficient to form a belief as to the truth of that part of paragraph "Third" of the bill from the beginning thereof to the statement that the logs therein mentioned were in the township of McMillan.

They admit that on the breaking up of the ice, and on or about the middle of May, 1899, complainant began driving a portion of said logs down the Ontonagon river, and continued doing so from then until about June 15th, 1899, until it had taken down said river and into its booms and pier jams, or sorting grounds at or near the mouth of said river, and outside of the village of Ontonagon ten million feet of logs; but these defendants deny that the greater portion of said ten million feet remain there, and aver on information and belief that all of said ten million feet have been driven further down said river to said last boom and sorting gap and shipped by rail as above described; and they deny that none of said logs were within the corporate limits of said village until and after June 15th, 1899.

They deny that not to exceed four hundred thousand feet of the logs at any one time since the date last aforesaid have been within the corporate limits of said village, and they aver on information and belief that from five hundred thousand to seven hundred thousand feet have been constantly within the limits of said village since the autumn of 1898.

They admit that the quantity last aforesaid, and the quantity spoken of in said paragraph "Third" as four hundred thousand feet, have been in the limits of said village for the purpose of shipment out of the same by rail, as in said bill alleged.

46 Fifth. Touching the matters relating to the question whether said property is subject to taxation in the said village of Ontonagon, these defendants say that they are advised and believe, and thereupon allege the fact to be, that all of the property men-

tioned in said bill of complaint, whether the same be more or less than is alleged in said bill, namely, all the logs in the Ontonagon river and its tributaries belonging to the complainant intended to be removed down said stream to and into the village of Ontonagon, thence to be shipped by rail as in said bill alleged, are, under and by virtue of the laws of Michigan, taxable in said village of Ontonagon as well as in said township of Ontonagon, said village last named being in said township last named. And they further aver that all of said property so situated, be the same more or less in quantity, are forest products and are in transit to a place without the State of Michigan, namely, in said Green Bay.

That the water transit of said property has heretofore ceased, and will continue to cease, in the village of Ontonagon and in said township of Ontonagon, whence the same is and is to be shipped by rail as aforesaid. That said Ontonagon river and its tributaries are streams of water or rivers all within the State of Michigan and within the county of Ontonagon, in which said village of Ontonagon is situate.

Seventh. These defendants admit that the law of Michigan in force in respect to the assessment of such property is set forth with substantial correctness in paragraph "Fourth" of the bill, and that certain provisions of the law of Michigan relating to villages are set forth with substantial accuracy in paragraph "Fifth" of the bill.

Eighth. As to the matters set forth in paragraph "Seventh" of the bill of complaint, these defendants on information and belief deny that the township of McMillan claimed the right to tax all of
47 complainant's logs, and deny that said township assessed all of complainant's logs for the year 1899, and aver upon information and belief that the assessment made by said township of McMillan, and in said paragraph "Seventh" referred to, was an assessment only of logs banked in unbroken rollways on the Ontonagon river, or on a tributary thereof, in said township of McMillan at the time said assessment was made, to wit, on the second Monday of April. But these defendants have no knowledge sufficient to form a belief whether said township of McMillan intends to levy a tax by virtue of said assessment, or to collect the same from said complainant or its property.

Ninth. As to the matters set forth in paragraph "Eighth" of the bill, these defendants aver on information and belief that the township of Ontonagon has the right to assess and tax all of complainant's logs which in this answer it is claimed the said village of Ontonagon has the right to assess and tax; but these defendants, so far as they have information, believe it to be true, that said township of Ontonagon has assessed said property and will levy a tax on the same in the manner and to the amount alleged in paragraph "Eighth" of the bill.

Tenth. These defendants admit the truth of the facts set forth in paragraph "Ninth" of the bill, except that they deny that none of complainant's logs were or ever came within the limits of the village of Ontonagon until after the 1st day of June, 1899, nor until after the proper time for the completion of the assessment of the property

within said village by the assessor thereof for the purpose of levying taxes thereon was passed, and in this behalf aver, as they have before averred, that there was within the corporate limits of said village at all times after the autumn of 1898, between five hundred thousand and seven hundred thousand feet of logs belonging to said complainant within said corporate limits.

48 Eleventh. As to paragraph "Tenth" of the bill of complaint, these defendants deny that the assessment of complainant's logs by the village of Ontonagon was illegal, fraudulent or void, and allege as aforesaid that such assessment was valid; deny that said village had no right to place said logs on its assessment-roll for the purpose of levying taxes thereon for the year 1899; deny that said village has no right to collect the tax levied thereon; deny that said village has no right to tax logs in transit; deny that no portion of said logs was within the corporate limits of said village at the time they were placed on the assessment-roll for the year 1899; deny that no portion of said logs had ever been, prior to that time, within said limits; admit that only a portion of said logs is now in said village, and that for the purpose of being shipped therefrom; deny that the amount of taxes levied by said village against complainant on account of its ownership of said logs is either excessive, exorbitant, or greater than the amount allowed to be taxed in any one year by said village upon property of the valuation of said logs, and aver, on information, advice and belief, the contrary of each and all of said matters. These defendants have no knowledge sufficient to form a belief whether the placing of said logs on the assessment-roll of said village was without the knowledge of the complainant, or whether complainant learned thereof before or after the time of the sitting of the board of review at the lawful time for the review of assessments.

Twelfth. As to the matters set forth in paragraph "Eleventh" of the bill, these defendants admit the truth thereof.

Thirteenth. As to paragraph "Twelfth" of the bill, these defendants have no knowledge sufficient to form a belief as to the truth thereof.

Fourteenth. As to paragraph "Thirteenth" of the bill, these defendants deny, on information and belief, that the valuation

49 of one hundred thousand dollars placed upon said property by the township of Ontonagon was exorbitant or excessive, or higher, relatively, than other personal property was assessed in said township for that year, and aver, upon information and belief, that complainant was apprised of said valuation at and before the session of the board of review of said township for the year 1899.

Fifteenth. As to paragraph "Fifteenth" of the bill, these defendants admit the truth thereof.

Sixteenth. In connection with paragraph "Fifth" and paragraph "Ninth" of the bill of complaint, and paragraph sixth of this answer, these defendants aver that in addition to the legislation of Michigan touching villages and touching the defendant, The Village of Ontonagon, set forth in paragraph "Fifth" of the bill, and in addition to other legislation of Michigan touching villages and the

said village of Ontonagon, the legislature of Michigan made the following enactments, to wit: act number 319 of the Laws of Michigan of the year 1893, entitled: "An act to allow the village of Ontonagon, in the county of Ontonagon and State of Michigan, to borrow money and issue bonds in the sum of thirty thousand dollars, to build water works and electric lighting plant." Which act was approved March 24th, 1893, and took immediate effect. And act number 283 of the Laws of Michigan of the year 1895, entitled "An act to allow the village of Ontonagon, in the county of Ontonagon and State of Michigan, to borrow money and issue bonds in the sum of twelve thousand dollars, to extend its system of water works and to complete its electric lighting plant." Approved February 13th, 1895, and ordered to take immediate effect.

And these defendants aver that pursuant to, and in accordance with, the terms of said two acts of the legislature last mentioned, and in accordance with a vote of the electors of said village at elections duly held under and in accordance with the said acts,
50 and pursuant to the action of the village council of the village of Ontonagon duly had in pursuance of said acts, the said village of Ontonagon in the year 1893 or 1894 borrowed the sum of thirty thousand dollars and issued its bonds therefor and sold the same, and in the year 1895 borrowed the further sum of twelve thousand dollars and issued its bonds therefor and sold the same, and that all of said bonds to the amount, reckoning principal and interest, of about forty thousand dollars, are now outstanding in the hands of *bona fide* holders and owners and constitute a charge against said village and against the taxable property thereof. And these defendants aver that, as stated in paragraph "Ninth" of said bill of complaint, out of six thousand seven hundred fifty dollars ($6,750.00) levied against said complainant as a tax upon its said logs, twelve hundred fifty dollars ($1,250.00) is for general purposes, being one and one-fourth (1¼) per cent. on such assessment. Five hundred dollars ($500.00) is for highway purposes, being five mills (.005) on each one dollar of such assessment, and five thousand dollars ($5,000.00), being five (5) per cent. on such assessment, is for the payment of certain of said bonds due and shortly to fall due, and for the payment of interest on said bonds. And these defendants aver that said village of Ontonagon, by virtue of the provisions of law set forth in the bill of complaint, and by virtue of the acts of the legislature, the titles of which are in this paragraph above set forth, had the right to raise by tax each and all of said amounts, and further aver that the village council of said village duly authorized the raising by tax in the year 1899 of the three above-named amounts for the several purposes above stated.

These defendants further aver the fact to be that all of the logs of said complainant in said river or stream and its tributaries were at the time of the assessment of 1899 made by the authorities
51 of said village and township of Ontonagon, in transit within the meaning of the laws of Michigan touching the taxation of logs and forest products in transit.

These defendants further aver that for ten years, or thereabouts, pre-

vious to the destruction by fire of complainant's mills at Ontonagon, said township of Ontonagon assessed for taxation year by year, all of said complainant's logs in said river and its tributaries, whether situate at the time of assessment in said Ontonagon township, or in other townships in said county of Ontonagon, or in the county of Gogebic, through part of which latter county part of said river and its tributaries run, as in transit to said mills in Ontonagon, and that said complainant acquiesced in such assessment, and for said years paid the taxes levied thereon year by year without protest, and that for two years after the destruction by fire of said mills, said township of Ontonagon in like manner assessed all of said logs so afloat as in transit, and that said complainant acquiesced in like manner in said assessment, and paid without protest (except as to 1898 a general protest, and not on the ground that said logs were not in transit) the taxes levied in said assessments in said above-named two years year by year. And defendants further aver that during all of said years, before and after the destruction of their said mills, said complainant treated said logs as in transit to their said mills in Ontonagon and Green Bay respectively.

JNO. HAWLEY,
President of the Village of Ontonagon.
GEORGE DUCLEAUX,
Treasurer of the Village of Ontonagon.

A. E. SHUSTER,
Solicitor for Defendants, Ontonagon Village & Geo. Ducleaux, Treas.

Business address, Ontonagon, Michigan.

CHADBOURNE & REES, *Of Counsel.*

52 STATE OF MICHIGAN, } *ss:*
County of Ontonagon, }

On this 3rd day of November, A. D. 1899, personally appeared before me, John Hawley and George Ducleaux, who being by me severally sworn, depose and say, the said John Hawley that he is president of The Village of Ontonagon, one of the defendants in the foregoing answer, and George Ducleaux, that he is treasurer of said village, and both say that they have read the foregoing answer by them subscribed and know the contents thereof, and that the same is true except as to matters therein set forth on information and belief, and as to those matters they believe it to be true.

[SEAL.] C. MEILLEUR,
Notary Public, Ontonagon Co., Mich.

(Endorsed:) 148. United States circuit court for the western district of Michigan, northern division. The Diamond Match Co. *vs.* The Village of Ontonagon, and George Ducleaux, *et al.*, treasurer. Answer. Filed Nov. 4 1899. F. M. Moore, dep. clerk. A. E. Shuster, sol'r for defendants, Ontonagon Village & Geo. Ducleaux. Chadbourne & Rees, of counsel.

53 And afterwards, to wit. on the 20th day of November, A. D. 1899, came the complainant, by its solicitors, and filed in the office of the clerk of said court, in said entitled cause, a certain replication in words and figures as follows, to wit:

54–59 UNITED STATES OF AMERICA:

United States Circuit Court, Western District of Michigan.

DIAMOND MATCH CO.
vs.
VILLAGE OF ONTONAGON ET AL.

Replication of the complainant to the joint and several answer of the Village of Ontonagon and George Ducleaux, treasurer thereof.

And now comes the complainant The Diamond Match Company, a corporation, and for replication to the joint and several answer of the Village of Ontonagon and George Ducleaux, treasurer thereof, says, that notwithstanding the joint and several answer of said defendants that it, the complainant, is entitled to the relief prayed for in its bill of complaint.

DIAMOND MATCH COMPANY,
By WALKER & PAYNE, *Its Solicitors.*

WALKER & PAYNE,
Solicitors for Complainant.

(Endorsed:) 148. In the U. S. circuit court, western district of Michigan. Diamond Match Co. *vs.* Village of Ontonagon. Replication. Filed Nov. 20 1899. Chas. L. Fitch, clerk. Walker and Payne, sol'rs for compl't.

* * * * * * * *

60 And afterwards, to wit, on February 25th, A. D. 1901, came the complainant, by Edwin Walker, its solicitor, and by leave of court first had and obtained, filed with the clerk of said court its amendment to its bill of complaint herein, which said amendment is in words and figures following, to wit:

61 In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

THE DIAMOND MATCH COMPANY
vs.
VILLAGE OF ONTONAGON and GEORGE DUCLEAUX, Treasurer.

It is hereby stipulated by and between the counsel for the complainant and defendants The Village of Ontonagon and George Ducleaux, treasurer, in said cause, that the following amendment may be filed to the complainant's bill of complaint herein, by inserting at the close of the sixth line of the tenth paragraph of the said bill of complaint, the following:

"That the taxes charged in said bill of complaint to have been assessed and levied by the officers of said defendant, The Village of Ontonagon under the statutes of the State of Michigan, under the provisions of which taxes were assessed, were illegal and void, because said taxes were assessed in violation of and repugnant to the general provisions of the Constitution of the United States; and especially because said taxes were assessed in violation of, and said statutes of the State of Michigan are in violation of and repugnant to those parts of section 8 of article 1 of the Constitution of the United States, which provide, that: 'The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States,' and section 10 of said article, which provides that: 'No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.'"

62

EDWIN WALKER,
Counsel for Complainant.
CHADBOURNE & REES,
Counsel for Defendants.

(Endorsed:) Circuit court of the United States, western district of Michigan, northern division. The Diamond Match Co., *vs.* The Village of Ontonagon & George Ducleaux, treas. Amendment to bill. Filed Feb. 25 1901. F. M. Moore, dep. clerk.

63 And afterwards, to wit, on March 6th, A. D. 1901, in the September term of said court 1900, in the record of proceedings thereof in said entitled cause, before the Honorable George P. Wanty, district judge, appears the following entry, to wit:

64 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Northern Division, Western District of Michigan. In Equity.

THE DIAMOND MATCH COMPANY, Complainant,
vs.
THE VILLAGE OF ONTONAGON, a Municipal Corporation; GEORGE Ducleau, Treasurer of the Village of Ontonagon; The Township of McMillan, a Quasi-public Corporation, and The Township of Ontonagon, a Quasi Corporation, Defendants.

On reading and filing the stipulation of the said complainant and the said defendants, The Township of McMillan and The Township of Ontonagon, on motion of Messrs. Walker & Payne, solicitors for said complainant.

It is ordered that the bill of complaint heretofore filed in this cause may be dismissed as against said defendants, The Township of Ontonagon and The Township of McMillan, respectively, without costs to be taxed.

Dated March 1st, A. D. 1901.

(Endorsed:) No. 148. The circuit court for the county of Marquette, northern division. Diamond Match Co. *vs.* The Village of Ontonagon, *et al.* Order dismissing. Filed Mar. 6 1901. F. M. Moore, dep. clerk. Ball & Ball, of counsel for co'pl't. Business address, Marquette, Mich.

65 And afterwards, to wit, on the 25th day of February, A. D. 1901, in the record of proceedings thereof in said cause, before the Honorable George P. Wanty, district judge, the following opinion was rendered, and an order entered in accordance therewith, dismissing the bill of complaint, which said opinion and order thereon are in words and figures as follows, to wit:

66 In the Circuit Court of the United States for the Western District of Michigan.

DIAMOND MATCH COMPANY
vs.
VILLAGE OF ONTONAGON and GEORGE DUCLEAUX, Treasurer, ET AL.

The complainant is a corporation organized under the laws of the State of Illinois and files its bill of complaint against the defendants to restrain the collection of a tax levied by the defendant Village of Ontonagon on logs which at the time of the assessment were at various places in and along the banks of the Ontonagon river in the State of Michigan. They were destined to be delivered at the complainant's mill at Green Bay in the State of Wisconsin to be there manufactured. Within the village of Ontonagon was the last boom or sorting gap from which the logs were to be taken and placed upon railroad cars for transportation to Green Bay and this boom or sorting gap is the last place where the logs are floated before shipment by rail. The logs on which the assessment was made had been for more than a year within the county of Ontonagon in and along the banks of the Ontonagon river and its tributaries. The law in force in the State of Michigan at the time the tax was levied relative to the taxation of forest products and logs in transit is as follows: "Personal property of non-residents of the State, and all forest products owned by residents or non-residents, or estates of deceased persons, shall be assessed in the township or ward where the same may be, to the person having control of the premises, store, mill, dock, yard, piling ground, place of storage or warehouse where such property is situated in such township,
67 on the second Monday of April of the year when the assessment is made, except that where such property is in transit to some place within the State it shall be assessed in such place, except that where such property is in transit to some place without the State it shall be assessed at the place in this State nearest to the last boom or sorting gap of the stream in or bordering on this State in which said property will naturally be last floated during the transit thereof, and in case the transit of any such property is to be other than through any water-course in or bordering on this State,

then such assessment shall be made at the point where such property will naturally leave the State in the ordinary course of its transit and such property so in transit to any place without the State shall be assessed to the owner or person, persons, or corporation in possession or control thereof, and in case such transit will pass said logs through the booms or sorting gaps, or into the places of storage of any person, persons or corporation operating upon such stream, then such property may be assessed to such person, persons, or corporation, and the person, persons, or corporation so assessed for any such property belonging to a non-resident of this State shall be entitled to recover from the owner of such property, by a suit in attachment, garnishment, or for money had and received, any amount which the person, persons or corporation so assessed is compelled to pay because of such assessment, and shall have a lien upon said property as security against loss or damage because of being so assessed for the property of another and may retain possession of such property until such lien is satisfied: Provided, further that any owner, or person, interested in said property may secure the release of the same from such lien by giving to the person, persons or corporation so assessed a bond in an amount double the probable tax to be assessed thereon, but not less than the sum of two hundred dollars ($200) with two sufficient sureties, conditioned
68 for the payment of such tax by such owner or person interested, and the saving of the person, persons or corporation assessed from payment thereof and from costs, damages and expense on account of its non-payment, which bond as to amount and sufficiency of security shall be approved by the county clerk of the county in which the assessment is made."

It is admitted by the parties to this suit that the assessment was not valid unless, as a question of law, the village of Ontonagon had the right to assess the logs which were in the river outside the limits of the village as being in transit under the statute of the State of Michigan above quoted. I do not see how this case can be distinguished from that of Elk Rapids Iron Co. *vs.* Township of Helena, 117 Mich. 211. In that case the logs which were on the banking grounds were held assessable at Elk Rapids, the place of their destination, because under a statute which provided that "where such property is in transit to some place within the State, it shall be assessed in such place," it was held that the logs for the purpose of taxation were in transit. The statute under which the assessment in controversy was made provides "that where such property is in transit to some place without the State, it shall be assessed at the place in this State nearest to the last boom or sorting gap of the stream in or bordering on this State in which said property will naturally be last floated during the transit thereof." This court is bound by the construction of a State statute made by the highest court of the State and there is no reason to believe that the statute under consideration would be given a different construction from that in the case of Elk Rapids Iron Company *vs.* Township of Helena, and therefore, for the purposes of taxation under this statute, the

logs upon which this assessment was made were in transit
69 from the time they were cut in the woods with the intention to have them transported to the complainant's mill at Green Bay for manufacture, and were properly assessed at the village of Ontonagon, that being "the place in this State nearest to the last boom or sorting gap of the stream in or bordering on this State in which said property will naturally be last floated during the transit thereof."

It is contended by the complainant that if these logs were in transit then they are the subject of interstate commerce and not taxable by the State authorities. I think under the construction of the statute by the supreme court of Michigan, these logs were in transit at the time the assessment was made for the purpose of taxation but not in the sense used in those judgments holding property to be the subject of interstate commerce within the meaning of the Federal Constitution and acts of Congress. The supreme court of Michigan holds that for the purpose of taxation when logs are cut with the intention of transporting them, they are in transit, but there is no case holding that the mere intention to ship property where no act has been done looking to its actual transportation, would make such property a subject of interstate commerce. Under the facts in this case these logs would not be a subject of interstate commerce until they were taken from the boom or sorting gap for the purpose of loading them on the cars for transportation to the mills of complainant at Green Bay. This was held in the case of Coe *vs.* Errol, 116 U. S. 517, referred to by complainant's counsel, where Justice Bradley cites the cases on this subject and comes to the conclusion that goods or products of a State intended for exportation to another State are liable to taxation as part of the general mass of property in the State of their origin until actually started in the course of transportation to the State of their destination and delivered to a common carrier for that purpose; but the
70 depositing of them at a depot for transportation is no part of the exportation itself, and the state of the owner's mind in relation to the goods and his intent to export them and his partial preparation to do so, does not exempt them from taxation. I think this property was subject to taxation, by the village authorities of Ontonagon, under the statute of the State of Michigan, and that the statute is not unconstitutional in attempting to tax a subject of interstate commerce. The bill must be dismissed.

GEO. P. WANTY,
U. S. District Judge.

(Endorsed:) 148. In the circuit court of the United States for the western district of Michigan. Diamond Match Company *vs.* Village of Ontonagon and George Ducleaux, treasurer, *et al.* Opinion. Filed Feb. 25 1901. F. M. Moore, dep. clerk.

71 In the Circuit Court of the United States for the Western District of Michigan, Northern Division. In Equity.

THE DIAMOND MATCH COMPANY
vs.
THE VILLAGE OF ONTONAGON; GEORGE DUCLEAU, Treasurer of said Village; The Township of McMillan, and The Township of Ontonagon.

At a session of said court held at Marquette in said western district of Michigan on the 25th day of February, in the year nineteen hundred and one.

Present: Hon. George P. Wanty, district judge.

This cause having duly come on to be heard upon the pleadings filed therein and upon the stipulations of fact entered into between the parties, also filed therein, and upon the proofs taken and filed therein, and having been argued by counsel, namely, by Walker and Payne, solicitors for said complainant, on behalf of said complainant, and by A. E. Shuster, solicitor, and Chadbourne and Rees, of counsel for said defendants, The Village of Ontonagon and George Ducleau, treasurer of said village, and after mature consideration by the court of said pleadings and said stipulations, and it appearing to the court, upon said hearing that the complainant is not entitled to the relief prayed for in said bill of complaint, on motion of A. E. Shuster, solicitor for the defendants above named, it is ordered, adjudged and decreed that the said bill of complaint be dismissed, and that the said defendants, The Village of Ontonagon and Geoige Ducleau, treasurer of said village, do recover against the said complainant, The Diamond Match Company, their costs in and about this suit expended to be taxed and that said defendants have execution thereof.

72 (Endorsed:) No. 148. The circuit court of the United States for western district of Michigan, northern division. Diamond Match Company, complainant, *vs.* The Village of Ontonagon & George Ducleaux, treasurer of said village *et als.*, defendants. Decree dismissing bill. Entry approved. Geo. P. Wanty U. S. dist. judge. 1 March 1901. Filed & entered Feb'y 25 1901. F. M. Moore, dep. clerk.

73 And afterwards, to wit, on the 23rd day of March, A. D. 1901, came the complainant by Edwin Walker, its solicitor, and filed in the office of the clerk of said court, its petition praying for an appeal from the order dismissing the bill of complaint, said petition having attached thereto the assignment of errors, which said petition and said assignment, and the order of the court entered upon said petition allowing said appeal are in words and figures as follows, to wit:

74 UNITED STATES OF AMERICA, *Western District of Michigan, Northern Division,* } ss:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

THE DIAMOND MATCH COMPANY
vs.
THE VILLAGE OF ONTONAGON and GEORGE DUCLEAU, Treasurer of said Village. } In Equity.

To the Honorable George P. Wanty, district judge and one of the judges of the above-named court, presiding:

The Diamond Match Company, complainant in the above-entitled suit in equity, considering itself aggrieved by the order and decree made and entered herein on the 25th day of February A. D. 1901, in the above-entitled cause, doth hereby appeal from the said decree and from the whole thereof, to the Supreme Court of the United States, and it prays that this, its appeal may be allowed, and that a transcript of the record and the proceedings and papers upon which said order and decree were founded, after due authentication, may be sent to the Supreme Court of the United States.

And the complainant further prays that an order may be entered in said cause, allowing said appeal, and upon the filing of its bond in the penal sum of ten thousand dollars ($10,000.00), with the American Surety Company, a corporation, as surety conditioned as required by law and the rules of this court, that the temporary injunction heretofore granted by said court, shall continue in force until the final disposition of said appeal.

75

EDWIN WALKER,
Solicitor for Complainant.

Appeal allowed to the Supreme Court of the United States, upon the filing of an appeal bond in the sum of $10,000 with the American Surety Company, a corporation, as surety, conditioned as required by law and the rules of this court, within thirty days from the date hereof.

And it is further ordered, that the temporary restraining order heretofore entered in said cause shall continue in force during said thirty days, and upon the filing of said bond within said period of time, said temporary injunction shall continue in force until the final disposition of said appeal, or the further order of said Supreme Court, and that said bond shall operate as a supersedeas.

GEO. P. WANTY,
U. S. District Judge.

The petitioner, for assignment of errors, says, that there is manifest error in the judgment and proceedings in this cause, to wit:—

First. The circuit court of the United States, for the western district of Michigan, northern division, erred, in holding that the statute of the State of Michigan, under and by authority of which

complainant's property was assessed for taxation, was not in contravention and repugnant to section 8 article 1 of the Constitution of the United States.

Second. The said circuit court erred in ordering and de-
76 creeing that the complainant's bill in said cause be dismissed for want of equity.

For which errors and each of them, petitioner prays that the judgment of the circuit court of the United States for the western district of Michigan, northern division, be reversed and in all things set aside.

EDWIN WALKER,
Solicitor for Petitioner.

(Endorsed:) 148. United States circuit court, western district of Michigan, northern division. Diamond Match Co. *vs.* Village of Ontonagon *et al.* Petition for appeal & order of allowance & assignments of error. Filed Mar. 23 1901. F. M. Moore, dep. clerk.

77 And afterwards, to wit, on the 21st day of March A. D. 1901, there was filed in the office of the clerk of said court, in said entitled cause, a certificate of evidence, which said certificate of evidence is in words and figures as follows, to wit:

78 T. L. Chadbourne. A. F. Rees.

Law office Chadbourne & Rees, Houghton, Mich.

DIAMOND MATCH CO.
vs.
VILLAGE OF ONTONAGON ET AL.

This record, with alterations and inserts #1, #2 and #3, as attached, is satisfactory to us.

CHADBOURNE & REES.

79 UNITED STATES OF AMERICA,
Western District of Michigan, Northern Division, } ss:

In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

THE DIAMOND MATCH COMPANY
vs.
THE VILLAGE OF ONTONAGON and GEORGE DUCLEAU, Treasurer of said Village.

Be it remembered and certified that the above-entitled cause was submitted for final hearing at this term of court upon the bill of complaint, the answers to said bill and the replications to such answers, and the evidence and upon the following stipulations of fact, to wit:—

It is hereby stipulated between the complainant, on the one hand, and the defendants, The Village of Ontonagon and George Ducleaux,

its treasurer, on the other, that the following statements of fact are true, and may be used in evidence on the bearing of said cause by either of the parties to this stipulation, subject to objection for immateriality.

1. Complainant shipped by rail from the village of Ontonagon to its mills at Green Bay, Wisconsin, for sawing there, the following quantities of logs, at the following times out of its logs in the Ontonagon river, described in the bill of complaint.

Forty-two million feet in the season of 1897; thirty-seven
80 million feet in the season of 1898, and fourteen million feet in the season of 1899 up to the date of the seizure of logs by the village of Ontonagon for the satisfaction of the tax levied and assessed in and by said village in the year last named.

2. Within the village of Ontonagon, is, and has been, situated in and throughout the year 1899 the last boom or sorting gap in said river, from which complainant's logs in said river are taken and placed upon the railroad cars for shipment to its said mills at Green Bay, and said boom or sorting gap is the last place in said river where said logs are floated before shipment by rail as aforesaid.

3. During the season of 1899, beginning about June 1st, and up to the time of the seizure above mentioned, about — million feet of the ten (10) million feet of logs mentioned in the bill of complaint, were driven down the said river from the boom, pier jams, or sorting grounds outside of said village, to the boom or sorting gap within said village, above described, and shipped thence by rail to complainant's said mills at Green Bay.

4. About five hundred thousand feet of complainant's said logs in said river have been (in said river of slough) constantly within said village since 1898, for the purpose of shipment by rail to the destination as aforesaid.

5. The village of Ontonagon is a duly incorporated village under the general law of Michigan, to wit: act number 3 of the Laws of Michigan of the Year 1895, entitled "An act to provide for the incorporation of villages within the State of Michigan, and defining their powers and duties," and is situate on said river and in The Township of Ontonagon, one of the defendants herein.

6. The water transit of said logs of complainant has hereto-
81 fore always ceased since the burning of complainant's mills, described in the bill of complaint, in said village, whence the same are shipped by rail as aforesaid.

7. Said river and its tributaries are streams of water or rivers, all within the State of Michigan and within the county of Ontonagon (and as to some small part within the counties of Gogebic and Houghton) in which county of Ontonagon said village is situated.

8. Pursuant to and in accordance with the acts of the legislature of Michigan mentioned in the answer of said village in this suit, namely act number 319 of the Laws of 1893, and act number 263 of the year 1895, and pursuant to and in accordance with a vote of the electors of the said village, duly held therein, and pursuant to, and in accordance with the action of its council, said village in the year

1894, borrowed the sum of thirty thousand dollars ($30,000), and issued and sold its bonds therefor, and in the year 1895 borrowed the further sum of twelve thousand dollars ($12,000) and issued its bonds therefor, and all of said bonds, being in principal and interest about forty thousand dollars ($40,000), were at the date of filing the bill of complaint in this cause, outstanding, and said bonds outstanding constitute a valid charge against said village and against the taxable property thereof.

EDWIN WALKER,
Solicitor for Complainant;
THE VILLAGE OF ONTONAGON,
A Municipal Corporation, and
GEORGE DUCLEAUX, *Its Treasurer,*
Defendants,
By A. E. SHUSTER, *Their Solicitor.*

It is hereby further stipulated by and between the complainant and the defendants Village of Ontonagon, and George Du-
82 cleau, its treasurer, that the following statements of fact are true, and may be used in evidence on the hearing of said cause by either of the parties to this stipulation, subject to objections for immateriality, to wit:

1. That the complainant is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business in the city of Chicago, in said State; that it is engaged, and has been from the date of its organization, in the manufacture and sale of matches, and that in the prosecution of its business it purchased and became the owner of a large amount of pine wood, timber, etc., situate on the Ontonagon river and its tributaries in Ontonagon county and other counties in the State of Michigan, and that for many years prior to 1896, it owned, and operated extensive saw-mills and plant near the mouth of the Ontonagon river, and within the corporate limits of the defendant Village of Ontonagon; that in its usual course of business, it cut or purchased a sufficient quantity of timber to supply its mills during the following season, not exceeding forty million of feet, board measure, and placed the same during the winter upon and in said Ontonagon river and its tributaries, there to remain until the breaking up of the ice in said river in spring time, when they were and are driven down the river to the pier jams, booms and sorting grounds of the complainant, located above said mills, and outside of the limits of the defendant, The Village of Ontonagon.

2. That in the summer of the year 1894, extensive forest fires swept over said pine lands of the complainant, and other pine lands, situate on said Ontonagon river, doing great damage to the timber thereon; that in order to preserve the timber so injured by said fire, it became and was necessary to cut all of said timber and put the same into the waters of the above-named stream for preservation; that
83 during the winter of 1894 and 1895, said complainant in order to preserve said timber, was compelled to cut and did cut about one hundred and eighty million feet of logs, and for the

sole purpose of preservation placed the same in said river and its tributaries, there to remain until the complainant could float said logs down said river and streams to its mills to be manufactured into lumber; that it was not the intention or purpose of the complainant after the opening of navigation and during the season of 1896 to remove all of said logs, but only such amount as could be manufactured at its said mills during the season, and that the capacity of said mills did not exceed about the amount of forty million feet per annum, as hereinbefore stipulated.

3. That the navigation of said river and stream is closed by reason of the formation of ice, about the first of December of each year, and is not open until after the first of May, following in each year.

4. That in the month of August A. D. 1896, the complainant's said mills were destroyed by fire, and that thereafter it became necessary, and the complainant did transport said logs by the Chicago, Milwaukee & St. Paul railway, from Ontonagon to its sawmills located at Green Bay, in the State of Wisconsin. That in the regular prosecution of its business of manufacturing said logs into lumber, said complainant has not during any season since 1896, transported a larger quantity of said logs than it could manufacture into lumber at its mills at Green Bay, said quantity being on an average of less than forty million feet of logs, board measure.

5. That for the purpose of preserving said logs and preventing the same from floating down said river and into Lake Superior, said complainant, was compelled to and has utilized certain jam piers, booms and appurtenances, constructed by the plaintiff across said river, more than one mile above the mouth thereof, and be-
84 yond the limits of said village of Ontonagon; that by reason of said appliances, said logs have been held in said river and upon the banks thereof above said jam piers, booms, etc., said complainant only passing through said piers such quantities as it could transport and manufacture into lumber at its said mills from time to time during each successive season since the year 1896; that during each successive season it has been the usual and necessary practice of the complainant to pass through said piers, booms, etc., such quantities of logs as said railway company could furnish facilities for transportation, thence down the river to the place of delivery as described in paragraph 2 of another stipulation of facts made herein, to said railway company, to be loaded upon cars for transportation, and that said place of delivery was near the mouth of said river and within the corporate limits of said defendant The Village of Ontonagon; that all of said logs so delivered to said railway company are transported over its lines to Green Bay, Wisconsin, leaving the State of Michigan at a point near the village of Iron Mountain in said State.

6. That at the close of the season of 1898 the logs in controversy were held by said complainant and detained and preserved by said jam piers, booms, etc., in said Ontonagon river, above and beyond the limits of said defendant, The Village of Ontonagon, waiting the delivery for transportation, as aforesaid, during the following season of the year 1899, and that all of said logs were a part of the entire

quantity cut and put in said river during the winter of 1895 and 1896, and had since that date been so held and detained by the complainant in its regular course of business; that all of said logs were so held and detained, and by reason of the ice in said river could not be floated down the same until about the middle of May, 1899, and that said logs so assessed as charged in said bill of complaint,
were not at the time said assessment was made, and on the
85 second Monday of April, A. D. 1899, were not except as stated
in paragraph 4 of another stipulation made herein, and never had been within the corporate limits of the said defendant The Village of Ontonagon.

7. That the logs in controversy at the time said assessment was made by said defendant, The Village of Ontonagon, were and had been for more than one year prior thereto in the manner above described, held and detained by the complainant within the municipal limits of the township of McMillan in said county of Ontonagon, and were assessed for the purpose of levying a tax thereon, for the year 1899, by the proper officers of said township of McMillan, claiming the right so to do under the general statutes and laws of the State of Michigan.

It is further stipulated and admitted by the parties to this stipulation that the assessment of the complainant's logs in controversy was not valid unless it shall be held as a question of law, that the defendant, The Village of Ontonagon had the legal right to assess said logs in said river outside and beyond the geographical limits of said village, as being in transit under the statutes of the State of Michigan in such case made and provided.

CHADBOURNE & REES,
Of Counsel for said Defendants.
DIAMOND MATCH COMPANY,
By EDWIN WALKER, *Solicitor.*

It is further stipulated :—

That if the village of Ontonagon was authorized by the laws of Michigan at the time of the assessment and taxation by said village of which complaint is made, to assess and tax complainant for the logs in question as being in transit, although outside the corporate limits of said village, the assessment actually made by it was not
exorbitant or excessive as compared with the assessments of
86 other property subject to assessment and taxation in said
village.

Nothing herein contained shall be taken to admit the right of said village to assess for taxation against said complainant or to tax its logs outside the corporate limits of said village.

EDWIN WALKER,
CHADBOURNE & REES,
Of Counsel for said Defendants.

Evidence af Defendants.

JOSEPH HAIGHT, a witness called by the defendants, testified as follows:

I am supervisor of the township of Ontonagon and have been since April 1897. Assessed the personal property of the complainant The Diamond Match Company for the years 1898 and 1899 in the Ontonagon river in the township of Ontonagon and in other townships outside of Ontonagon, through which the Ontonagon river passes. Assessed all the logs that were considered in transit in the Ontonagon river and its tributaries. In the year 1899 I assessed these logs at $175,000 and the board of review reduced it to $140,000. These logs were in the townships of Ontonagon, McMillan, Matchwood and Rockland. Mr. Wendell appeared before the board of review for the Diamond Match Company in the year 1899. He protested against the whole assessment and laid his protest on the table. For the year 1899 I assessed the logs in the Ontonagon river as in transit on the second Monday in April. We assessed them because we considered the logs to be in transit. I know that the collection of the taxes for the year 1899 for the township of Ontonagon were enjoined. They were afterwards paid, but I do not know whether they were paid by mistake or otherwise. The logs assessed in 1899 were among the logs assessed for the years
87 1897 and 1898. The greater part of the logs assessed for the year 1899 were banked and rolled and put in the river in the winter of 1896. I did not assess for the years 1899, 1898 and 1897 all the logs of the Diamond Match Company in, along or upon the banks of the Ontonagon river and its tributaries. The logs that I did assess were the logs in the river owned by the Diamond Match Company. These were logs that the Diamond Match Company had started to drive. I think the rollways were broken on the second Monday of April in these different years. I do not know of my own knowledge when the Diamond Match Company began driving logs in any of the years mentioned. I do not know how many of the logs were within the corporate limits of the village of Ontonagon on the second Monday of April 1899. I do not know how many of the logs were in the river at the time of the assessment for these respective years.

Redirect:

The Diamond Match Company did not represent to me or to the board of review the quantity of logs that they intended to ship to Green Bay during each or all of said years.

JOHN HAWLEY, a witness called by the defendants, testified as follows:

I reside in the village of Ontonagon, State of Michigan. Was a member of the board of review of the township of Ontonagon in the years 1897, 1898 and 1899. The valuation of the logs for these years was placed upon the logs afloat in the river and its tributaries.

I don't know what proportion of the logs assessed for the year 1899 were in Ontonagon township.

Cross-examination:

I don't know how many of the Diamond Match Company's logs were in the village of Ontonagon on the second Monday of
88 April 1899. Probably half a million feet; I don't know. A fair valuation of the half million feet would be about five dollars a thousand. The assessment of the plaintiff's logs in 1899 was on all the logs of the company in the Ontonagon river and its tributaries. I was village president of Ontonagon in 1899, and approved the assessment-rolls. I know of my own knowledge that the assessment made by the village of the Diamond Match Company's logs, for the year 1899 covered all the logs in the Ontonagon river and its tributaries. I don't know in what townships. I don't know when they were put in the river, nor did I know when the Diamond Match Company began driving logs in the spring of 1899. I understood all the logs taxed by the village in 1899 had been driven previous to the year 1899.

Redirect:

For the years 1897, 1898 and 1899 at the time of the meeting of the board of review, I supposed all these logs were in transit on the second Monday of April to Green Bay, Wisconsin. The last boom or sorting gap for these logs was in the township of Ontonagon and the Ontonagon river is the last water that they would be floating on.

JAMES CORGAN, a witness called by defendants, testified as follows: I was a member of the board of review for the township of Ontonagon for the years 1897, 1898 and 1899, and assisted in fixing the valuation of the Diamond Match Company's logs then in the Ontonagon river and its tributaries. We deemed these logs to be in transit to Green Bay, Wisconsin, and assessed them accordingly. I do not know what part of the logs were considered to be in the township of Ontonagon. The Diamond Match Company did not have other personal property within the township of Ontonagon equaling or anywhere near equaling the value of the logs. If the company had other personal property within the township
89 of Ontonagon for those years of any such value, I should have known it. I think Mr. Wendell, representing the Diamond Match Company, appeared before the board of review for 1899 and filed a written protest on the ground of the assessment of the logs of the company in transit by the township.

Cross-examination:

Was a member of the council of the village of Ontonagon for the year 1899 and as such examined the assessment-rolls. From that examination I can state that the village of Ontonagon did assess the logs of the Diamond Match Company for the year 1899; that they

were then in the Ontonagon river and its tributaries. The greater portion of these logs were not within the corporate limits of the village. I could not tell how many were within the limits. The greater part of the logs were in the river and on its banks, and in the tributaries along their banks.

I cannot say from memory the time when they were put in the river or its tributaries. I know of my own knowledge that the logs assessed by the village and township in 1899 were among the logs that were assessed by the township of Ontonagon in the years 1897 and 1898 and were logs that remained over from those years. It is not true that both the township of Ontonagon and the village of Ontonagon assessed the Diamond Match Company's logs for the year 1899 that were in and along the Ontonagon river and its tributaries on the 2nd Monday in April of that year. There were three million (3,000,000) feet in the Baltimore, together with other logs that had remained where they were originally deposited, that were not taxed. All logs that had moved from their original place of deposit into or down the river were considered *in transitu*, and were assessed by the township board of review and by the village for 1899. The major part of the logs were put in the river some three or four years ago, but some were put in more recently. I knew that the Diamond Match Company had not been
90 making clean drives of the river during these years. In passing down the stream many of the logs have floated ashore and are left there from year to year, and these logs were included in the assessment of the village and township.

And inasmuch, as the matters above set forth, do not fully appear of record in this suit, the complainant tenders these stipulations as admissions of fact, and prays that the same may be certified under the hand and seal of the judge of this court, and thereupon made a part of the record in such cause.

And it is certified accordingly this 21st day of March, A. D. 1901.

GEO. P. WANTY,
U. S. District Judge.

(Endorsed:) 148. United States circuit court, western district of Michigan, northern division. Diamond Match Co., *vs.* Village of Ontonagon *et al.* Certificate of evidence. Filed Mar. 23 1901. F. M. Moore, dep. clerk.

91 And afterwards, to wit, on the 23rd day of March, A. D. 1901, there was filed in the office of the clerk of said court, a certain appeal bond, which said bond, together with the endorsements and certificates thereto attached, is in words and figures as follows, to wit:

92 UNITED STATES OF AMERICA, *ss:*

United States Circuit Court, Western District of Michigan, Northern Division.

THE DIAMOND MATCH COMPANY, a Corporation, Complainant,
vs.
THE VILLAGE OF ONTONAGON, a Municipal Corporation of the State of Michigan, and George Ducleaux, Treasurer of the Village of Ontonagon, Defendants.

Know all men by these presents, that we, the Diamond Match Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, as principal, and the American Surety Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and authorized to do a surety business in the State of Michigan, as surety, are held and firmly bound unto said Village of Ontonagon and George Ducleaux, treasurer thereof, in the penal sum of ten thousand dollars ($10,000), lawful money of the United States, to be paid to said village and said treasurer thereof, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our successors or assigns jointly, severally, and firmly by these presents.

Witness our hands and seals this twelfth day of March, A. D. 1901.

Whereas, the said Diamond Match Company, a corporation, did on the 25th day of August, A. D., 1899, file its certain bill in the above-mentioned court against the above-named defendants, to restrain said defendants from in any way levying or seizing any of the
93 property of said complainant or taking any other steps against said complainant to enforce the payment of the taxes levied upon the property of the complainant company for municipal purposes for the year 1899, amounting to the sum of six thousand seven hundred and fifty dollars ($6,750.00), and,

Whereas, on the day and date last mentioned, the said court issued its temporary restraining order in accordance with the prayer of complainant's said bill, which said restraining order was continued in force from time to time, to and until the 25th day of February, A. D., 1901, and,

Whereas, on the said 25th day of February, A. D., 1901, said cause having come on for final hearing, it was decreed by said court that the complainant take nothing by its said bill and that said bill be dismissed for want of equity, and that the said defendants have and recover from the complainant their costs in said suit, and a decree to that effect was accordingly entered on said day, from which said decree of the said circuit court of the United States, for the western district of Michigan, northern division, the said complainant, The Diamond Match Company, has prayed for and obtained an appeal to the Supreme Court of the United States upon the filing of its bond herein in the sum of ten thousand dollars ($10,000), conditioned upon its payment of the said taxes in case it shall fail to prosecute said appeal with effect, said restraining order of said circuit court to remain in full force and effect pending said appeal;

Now, therefore, the condition of this obligation is such, that if the said Diamond Match Company, a corporation, shall prosecute such appeal with effect and answer to the costs and damages awarded to the said defendant if it shall fail to make good its appeal, and shall pay the amount of the taxes above mentioned for the year 1899 which are involved in this litigation, provided the decree of
94 the said United States circuit court, for the western district of Michigan, northern division, shall be affirmed or the appeal dismissed, then the above obligation to be void; otherwise to remain in full force and effect.

Approved:
GEO. P. WANTY,
U. S. District Judge.

THE DIAMOND MATCH CO., [SEAL.]
By J. K. ROBINSON, *Treas.* [SEAL.]
[SEAL.]

Attest:
[SEAL.] RALPH E. WIRT, *Secretary.*

AMERICAN SURETY COMPANY OF NEW YORK,
By DAVID B. SICKELS, *Vice-President.*
CORTLANDT S. VAN RENSSELAER,
[SEAL.] *Attorney.*

(25-cent internal-revenue stamp, cancelled.) 83787.

95 STATE AND COUNTY OF NEW YORK, *ss:*

On this 13th day of March, 1901, before me personally appeared David B. Sickels, vice-president of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said David B. Sickels further said that he was acquainted with Cortlandt S. Van Rensselaer and knew him to be one of the attorneys of said corporation, that the signature of said Cortlandt S. Van Rensselaer subscribed to the said instrument, is in the genuine handwriting of the said Cortlandt S. Van Rensselaer and was thereto subscribed by the like order of the said board of directors, and in the presence of him the said David B. Sickels, vice-president.

K. J. PEIRCEY,
[SEAL.] *Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland and Nassau Co.'s.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"Resolved, That the president and vice-presidents be and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company,
96 in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the atttorneys."

COUNTY OF NEW YORK, *ss:*

I, Cortlandt S. Van Rensselaer attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at
[SEAL.] the city of New York, this 13th day of March, 1901.

CORTLANDT S. VAN RENSELAER, *Attorney.*

97 American Surety Company of New York; general offices, 100 Broadway.

Incorporated April 14, 1884.

Financial Statement Dec. 31, 1900.

Resources.

Real estate and improvements	$3,028,217.16
Stocks and bonds	1,156,437.50
Bills receivable	662,795.33
Cash in banks and offices	263,930.37
Premiums in course of collection	212,726.12
Accrued interest and rents	30,179.39
	$5,354,285.87

Liabilities.

Capital stock	$2,500,000.00
Surplus	1,000,000.00
Undivided profits	953,290.16
Premium reserve requirement	592,251.67
Claims in process of adjustment	291,616.17
Bills and accounts payable	17,127.87
	$5,354,285.87

98 STATE OF NEW YORK, } ss:
County of New York, }

Henry Tofts, being duly sworn, says: That he is an assistant secretary of the American Surety Company of New York; that said company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said company, and is duly qualified to act as surety under such laws. That said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13, 1894, entitled "An act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said company as rendered pursuant to section 4 of said act of Congress; that said American Surety Company of New York is worth more than $2,500,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

HENRY TOFTS.

Subscribed and sworn before me this — day of ——, 1901.

K. J. PEIRCEY,

[SEAL.] *Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland and Nassau Co.'s.

(Endorsed:) 148. United States circuit court, western district of Michigan, northern division. The Diamond Match Company, a corporation, complainant, *vs.* The Village of Ontonagon, a municipal corporation of the State of Michigan, *et al.*, defendants. Bond. Filed Mar. 23 1901. F. M. Moore, dep. clerk.

99 And afterwards, to wit, on the 27th day of March, A. D. 1901, there was filed in the office of the clerk of said court, a certain citation, which citation, together with the endorsements of acceptance of service thereon, is in words and figures as follows, to wit:

100 In the Circuit Court of the United States for the Western District of Michigan, Northern Division.

THE DIAMOND MATCH COMPANY
vs.
VILLAGE OF ONTONAGON and GEORGE DUCLEAU, Treasurer of said Village.

UNITED STATES OF AMERICA, *ss:*

To the Village of Ontonagon and George Ducleau, treasurer of said village, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Wash-

ington, on the second Monday of October, A. D. 1901, pursuant to an appeal filed in the clerk's office of the said United States court for the western district of Michigan, northern division, wherein The Diamond Match Company is appellant, and The Village of Ontonagon and George Ducleau, treasurer of said village, are respondents, to show cause, if any there be, why the judgment in said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 25th day of March in the year of our Lord one thousand nine hundred and one.

GEO. P. WANTY,
U. S. District Judge.

Service accepted, Mar. 25th 1901,
CHADBOURNE & REES,
Counsel for Village of Ontonagon and George Ducleau, Respondents.

101 (Endorsed:) 148. The circuit court of the U. S. for west. dist. of Mich., northern division. In equity. Diamond Match Company *vs.* The Village of Ontonagon and George Ducleaux, treasurer of said village. Citation & proof of service. Filed Mar. 27 1901. F. M. Moore, dep. clerk.

102 UNITED STATES OF AMERICA, *ss:*

United States Circuit Court, Western District of Michigan, Northern Division.

I, Francis M. Moore, deputy clerk of the circuit court of the United States for said northern division, western district of Michigan, do hereby certify the above to be a full, true and complete transcript of all the proceedings had in said court in the cause entitled The Diamond Match Company, a corporation, *vs.* The Village of Ontonagon and George Ducleau, treasurer thereof, as the same appears from the original records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in the city of Marquette, in said division and district, this second day of May, A. D. 1901.

{ Seal of the U. S. Circuit Court, Western District of Mich., Northern Division. }

FRANCIS M. MOORE,
Deputy Clerk.

103 In the Supreme Court of the United States, October Term, A. D. 1901.

Appeal from the circuit court of the United States, western district of Michigan, northern division.

DIAMOND MATCH COMPANY, Appellant,
vs.
VILLAGE OF ONTONAGON ET AL., Appellees.

Statement of Errors upon which Appellant Intends to Rely, and of the Parts of Record Necessary for the Consideration Thereof.

Errors relied on.

First. The circuit court of the United States for the western district of Michigan, northern division erred in holding that the statute of the State of Michigan under and by authority of which complainant's property was assessed for taxation, was not in contravention of and repugnant to section 8 and section 10 of article 1, of the Constitution of the United States.

Second. The said circuit court erred in ordering and decreeing that the complainant's bill in said cause be dismissed for want of equity.

103½ *Parts of Record Designated by Appellant as Material.*

1. Copy of bill of complaint.
2. Answer of defendants The Village of Ontonagon and George Ducleaux, treasurer.
3. Replication.
4. Amendment to bill.
5. Order of court dismissing bill as to the defendants, The Township of McMillan and The Township of Ontonagon.
6. Decree dismissing bill.
7. Petition for appeal, and order of allowance.
8. Certificate of submission of case on bill, answer, replication and stipulations. (Evidence omitted)
9. Bond on appeal.
10. Citation.
11. Clerk's certificate.
12. Opinion of circuit court.

EDWIN WALKER,
Attorney for Appellant.

[Endorsed:] In the Supreme Court of the United States. Diamond Match Co. appellant *vs.* Village of Ontonagon *et al.* appellees. Statement of errors & parts of record to be printed. Edwin Walker att'y for appellant.

104 [Endorsed:] File No. 18,153. Supreme Court U. S. October term, 1901. Term No. 320. The Diamond Match Company, appellant, *vs.* The Village of Ontonagon *et al.* Statement of errors and designation by appellant of parts of record to be printed. Filed June 3, 1901.

105 In the Supreme Court of the United States.

DIAMOND MATCH COMPANY, Appellant,
vs.
VILLAGE OF ONTONAGON ET AL., Appellees.

It is hereby stipulated by and between the parties herein, that the first assignment of error may be amended by adding thereto, after the words section 8, ("and section 10,") so that said assignment of error shall be as follows:

First. The circuit court of the United States for the western district of Michigan, northern division, erred in holding that the statute of the State of Michigan, under and by authority of which complainant's property was assessed for taxation, was not in contravention of and repugnant to section 8 and section 10 of article 1 of the Constitution of the United States.

EDWIN WALKER,
Solicitor for Appellant.
T. L. CHADBOURNE,
Solicitor for Appellees.

[Endorsed:] In the Supreme Court of United States. Diamond Match Co. appellant, *vs.* Village of Ontonagon *et al.* Stipulation. Edwin Walker, att'y for appellant.

106 [Endorsed:] File No. 18,153. Supreme Court U. S. October term, 1901. Term No. 320. The Diamond Match Company, app't *vs.* The Village of Ontonagon *et al.* Stipulation to amend first assignment of error. Filed June 3d, 1901.

107 In the Supreme Court of the United States, October Term, 1901.

DIAMOND MATCH COMPANY, Appellant,
vs.
VILLAGE OF ONTONAGON ET AL., Appellee-. } Number 320.

It is hereby stipulated by the parties in the above-entitled cause, by their respective attorneys, that the clerk may print the evidence contained in the certificate of evidence, in addition to the parts of record designated by the appellant and filed with the clerk of said court June 3rd, 1901.

EDWIN WALKER,
Attorney for Appellant.
T. L. CHADBOURNE,
Attorney for Appellee.

[Endorsed:] #320 In the Supreme Court of the United States Diamond Match Co., appellant *vs.* Village of Ontonagon *et al.*, appellee- Stipulation

108 [Endorsed:] File No. 18,153. Supreme Court U. S. October term, 1901. Term No. 320. The Diamond Match Company, app't, *vs.* The Village of Ontonagon *et al.* Stipulation to print parts of record in addition to those already designated. Filed June 24, 1901.

Endorsed on cover: File No. 18,153. W. Michigan C. C. U. S. Term No. 320. The Diamond Match Company, appellant, *vs.* The Village of Ontonagon, and George Ducleau, treasurer of said village. Filed May 13, 1901.